



WEB COPY

W.P.(MD).No.6247 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD) .No.6247 of 2017

and

W.M.P. (MD) Nos.4933 and 4934 of 2017

Veerasamy

.. Petitioner

Vs.

1.The State of Tamil Nadu,

Represented by the Secretary to Government,
Adhidraavidar and Tribal Welfare Department,
Fort St. George, Chennai - 600 009.

2.The Director,

Adhidraavidar and Welfare Directorate,
Chepauk, Chennai - 600 005.

3.The District Collector,

Dindigul District,
Dindigul.

4.The District Adhidraavidar and Tribal Welfare Officer,

Dindigul District, Dindigul.

5.The Work Supervisor/Overseer,

Adhidraavidar and Tribal Welfare Department,
Collectorate, Dindigul,
Dindigul District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the third respondent in Na.Ka.No.36513/2015/H6, dated .03.2017 and quash the same and further directing the respondents No.3 and 4 to disburse Rs.79,136/- to the petitioner for completion of electrical works in the Government Men's Hostel (Schedule Caste and Tribal Welfare Department) Ayakudi, Palani Division - 2, Dindigul District.

For Petitioner

: Mr.S.Deenadhayalan

For Respondents

: Mr.A.Muthukaruppan

Additional Government Pleader

ORDER

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to quash the proceedings of the third respondent dated Nil in Na.Ka.No.36513/2015/H6 and to direct the respondents 3 and 4 to disburse a sum of Rs.79,136/- to the petitioner for completion of electrical works in the Government Men's Hostel (SC/ST Welfare Department), Aayakudi, Palani Division.



2.The petitioner was appointed as contractor for repairing electrical works and to renovate the Government Men's Hostel (Schedule Caste and Tribal Welfare Department) Aayakudi, Palani Division II, Dindigul District. It is stated that the third respondent though instructed to complete the work in one week after execution of the agreement in a stamp paper for the value of Rs.20/-, it is stated by the petitioner that the fourth respondent evaded to execute the agreement stating urgency and simply ordered to complete the work within one week. It is stated by the petitioner that the petitioner has completed the work properly and after completion of work, the fifth respondent also found that the work was properly done after inspection. It is the case of the petitioner that the fifth respondent even after forwarding the contract certificate to the respondents 3 and 4 there was some contradictory report and the respondents did not disburse the claim amount. The petitioner, therefore, submitted a representation on 03.11.2016. Stating that there was no fruitful response from the respondents 1 to 4, the petitioner was constrained to issue a legal notice to the fourth respondent on 15.11.2016. There was a reply to the effect that the work was not completed as per the contract. In the interregnum, the third respondent passed the impugned order blacklisting the petitioner without prior notice or an opportunity. Though the third respondent has filed a counter, dealing with all the legal and factual issues about the petitioner, it is admitted by third respondent that no show cause notice was issued to the petitioner before passing the impugned order. It is further admitted that no enquiry was also conducted before blacklisting the petitioner. Therefore, the impugned order, which will have civil consequences, has been passed by the third respondent in violation of principles of natural justice.

3.The Hon'ble Supreme Court in ***Gorkha Security Services v. Government (NCT of Delhi) and others*** reported in ***(2014) 9 SCC 105*** has reiterated the position that blacklisting is a penalty affecting the interest of a contractor and that blacklisting without proper notice is contrary to principles of natural justice and the order blacklisting without proper notice, is liable to be quashed. Paragraphs 21 and 22 of the judgment of the Hon'ble Supreme Court are relevant and hence, they are extracted as under:

"21. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the notice understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the notice is able to point out that proposed



defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22) The High Court has simply stated that the purpose of show cause notice is primarily to enable the notice to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the notice does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

- i) The material/ grounds to be stated on which according to the Department necessitates an action;
- ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

4.It has been held in the judgment of this Court in the case of ***S.P.Agencies v. Tamil Nadu Ware Housing Corporation*** reported in **2017 (5) CTC 188** that blacklisting or debarring a contractor without adequate opportunity of hearing or unilateral decision to blacklist the contractor is illegal and it should be struck down. Even a show cause notice is expected to be more precise as to the illegality committed by the contractor. In the light of the judgments and principles enunciated by the Hon'ble Supreme Court and this Court, this Court has no hesitation to hold that the impugned order is in violation of principles of natural justice and the order affecting the civil rights of the petitioner cannot be sustaining if it is in violation of principles of natural justice.

5.As a result, this Writ Petition is allowed and the impugned order passed by the third respondent vide Na.Ka.No.36513/2015/H6, is quashed. However, it is open to the respondents to take appropriate action following a fair procedure as indicated by Hon'ble Supreme Court and this Court refused to supra. Insofar as the additional amount of Rs.79,136/- is concerned, it is open to the petitioner to pursue his remedy by making a representation. When such representation is made by the petitioner to the fourth respondent within a period of two weeks from the date of receipt of copy of this order, the fourth respondent is directed to consider the representation of the petitioner and pass appropriate orders on



merits and in accordance with law within a period of eight weeks from the date of receipt of such representation from the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

- 1.The Secretary to Government,
Adhidraavidar and Tribal Welfare Department,
Fort St. George, Chennai - 600 009.
- 2.The Director,
Adhidraavidar and Welfare Directorate,
Chepauk, Chennai - 600 005.
- 3.The District Collector,
Dindigul District, Dindigul.
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Dindigul District, Dindigul.
- 5.The Work Supervisor/Overseer,
Adhidraavidar and Tribal Welfare Department,
Collectorate, Dindigul,
Dindigul District.

+1 CC to M/s.SPL.GP (SR-105563[F] dated 18/12/2019)

+1 CC to M/s.S.DEENADHAYALAN, Advocate(SR-105606[F] dated 18/12/2019

ORDER MADE IN
W.P. (MD) No.6247 of 2017

17.12.2019

SMA/05/02/2020/4P/8C